

## **REMARKS**

In the office action of March 5, 2007 (“Office Action”), Examiner rejected Claims 1, 3-12, 25, 28-31 and 36 under 35 U.S.C. § 112, second paragraph, as being indefinite. Examiner rejected Claims 33-35 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,781,314 to Schoonover et al. (issued Nov. 1, 1988; hereinafter “Schoonover”). Examiner also rejected Claims 1, 4, 28, 31 and 33-36 under 35 USC § 103(a) as being unpatentable over U.S. Patent 6,237,792 to Skolnicki et al. (issued May 29, 2001; hereinafter “Skolnicki”). Examiner has maintained the allowance of Claims 13-24, 26, 27 and 32.

Applicant appreciates the maintenance of the allowance of Claims 13-24, 26, 27 and 32.

Applicant respectfully traverses the rejections to the currently rejected claims, and submits the following arguments.

### *Rejection of Claims 1, 3-12, 25, 28-31 and 36 Under 35 U.S.C. §112, Second Paragraph*

Applicant has amended Claims 1, 11, 12, 25 and 29 to replace occurrences of the term “container” with “bottle” which has an antecedent basis in Claim 1. The term “beverage container” in Claim 25 has been replaced with “bottle.” Accordingly, Applicant requests that the 35 U.S.C. § 112, second paragraph rejections of Claims 1, 3-12, 25 and 28-31 be withdrawn.

Applicant respectfully asserts that Claim 36 as originally written was not indefinite. However, in order to expedite examination of Claim 36, Applicant has amended Claim 36 to a condition that Applicant believes will be more acceptable to the Examiner. Applicant asserts that this amendment does not narrow Claim 36 in any way. Accordingly, Applicant requests that the 35 U.S.C. § 112, second paragraph rejection of Claim 36 be withdrawn.

### *Rejection of Claims 1, 4, 28, 31 and 33-36 Under 35 U.S.C. §103(a) over Skolnicki*

The recess in the bottom wall of the bottle Applicant’s Claim 1 can receive “one or more fingers of a hand of a user when the user is pouring liquid,” and the groove in the side wall can receive “one or more other fingers of the hand of a user when the user is pouring liquid” (emphasis added). Accordingly, the bottle is configured so that a user may simultaneously have some fingers of one hand in the recessed portion and other fingers of the same hand in the

groove while pouring. Indeed an example of this is illustrated in Figure 8. Applicant respectfully maintains that Skolnicki does not contemplate such a simultaneous use and that Skolnicki does not render Applicant's Claim 1 obvious.

Indeed, Skolnicki teaches away from the simultaneous use of the handle 70A and the secondary handle 67. Skolnicki repeatedly refers to the handle 70A as an "alternate handle" (see Skolnicki, col. 5, line 24 and col. 5, line 25) and that it is in an "alternate position" (see col. 5, line 28). The alternate handle of Skolnicki is configured such that the fingers of a hand of a user would curl in an upward direction (as seen in Skolnicki Figure 9) when inserted into the alternate handle, strongly implying that a thumb of a user would be situated higher up on the bottle and away from the circular cavity 69. Moreover, the shape of the handle 70A is not conducive for use simultaneously with the circular cavity 69 and is oriented in such a way to teach away from such a use.

Nowhere does Skolnicki disclose or imply simultaneous use of the handle 70A with the secondary handle 67. Moreover, Skolnicki introduces the handle 70A as "the relocation of the handle." Skolnicki, col. 5, line 19. "Relocation" implies that the handle 70A functionally replaces the secondary handle 67.

Furthermore, Skolnicki describes that a benefit of handle 70A is that it is located differently relative to the center of gravity of the bottle to facilitate dispensing. Such an advantage would not be realized if the bottle was being gripped at the circular cavity 69. Finally, the circular cavity has a function unrelated to gripping while pouring. Circular cavity 69 may receive a locking bar 78 to "retain the bottles onto the shelf 31." Skolnicki, col. 3, line 50. Therefore, Skolnicki Figure 9, which shows a bottle with an alternate handle 70A and circular cavity 69, is not an indicator that the alternate handle 70A and circular cavity 69 are configured to be simultaneously used by a single hand of a user, since, inter alia, the features may serve vastly different functions.

Therefore since Skolnicki does not contemplate a recess on a bottom wall and a groove on a side wall that can both be accessed by a single hand of a user while pouring liquid, and in fact teaches away from such a configuration, Applicant respectfully asserts that the use of Skolnicki to provide the sole basis for a 35 U.S.C. §103(a) rejection is inappropriate and Claim 1 is in condition for allowance. Accordingly, since Claims 4, 28, and 31 are dependent on Claim 1, these claims should also be allowed.

Applicant's independent Claim 33 also contains a recessed portion in the bottom wall that can receive "one or more fingers of a hand of a user," and a groove in the side wall that can receive "one or more other fingers of the hand of a user" when the user is pouring liquid. Therefore, for the same reasons set forth above with respect to Claim 1, Applicant respectfully asserts that the use of Skolnicki to provide the sole basis for a 35 U.S.C. §103(a) rejection of Claim 33 is inappropriate and Claim 33 should be allowed. Accordingly, since Claims 34-36 are dependent on Claim 33, these claims should also be allowed.

Rejection of Claims 33-35 Under 35 U.S.C. §103(a) over Schoonover

Applicant's Claim 33 claims, inter alia, a groove formed in an outer surface of a sidewall operable to receive "one or more other fingers of the hand of a user when the user is pouring liquid" where the groove has "a portion that is sloped to run from a position that is relatively closer to the bottom wall to a position that is relatively further from the bottom wall." Emphasis added. Accordingly, the groove of Applicant's Claim 33 is (1) a groove that (2) can receive one or more fingers and (3) is sloped.

The entirety of the written disclosure of the features on the sidewall 14 of Schoonover states:

Preferably, the side wall 14 is reinforced by ridges 32 which extend diagonally across opposing corners, i.e. from first corner 24 to third corner 28 and from second corner 26 to fourth corner 30. The ridges 32 may be raised or depressed from the surface of the side walls 14.

Schoonover, col. 2, lines 39-44 (emphasis added). No disclosure whatsoever of any other function or use of the reinforcing ridges is disclosed in Schoonover. There is no mention of the height of the raised reinforcing ridges or of the depth if the reinforcing ridges are depressed. There is no mention of width or whether or not the reinforcing ridges, when they are depressed, could receive one or more fingers of a hand. Consequently, Applicant respectfully maintains that Schoonover does not disclose a sloped groove that can receive one or more fingers such as that of Applicant's Claim 33. Furthermore, a depressed ridge should not be considered a disclosure of a groove operable to "receive one or more other fingers of the hand" simply because it is a depressed ridge. As stated by the Federal Circuit, "Inherency ... may not be

established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (*Internal citations omitted*). Consequently, the ridges 32 of Schoonover should not be assumed to have the same functionality of the groove of Applicant's Claim 33 without additional evidence supporting such a conclusion. Applicant respectfully asserts that there is no such evidence. As such, Applicant respectfully maintains that Schoonover does not render Applicant's Claim 33 obvious.

As noted above, Applicant's independent Claim 33 contains a recessed portion in the bottom wall that can receive "one or more fingers of a hand of a user," and a groove in the side wall that can receive "one or more other fingers of the hand of a user" when the user is pouring liquid.

Schoonover contains no disclosure whatsoever where one or more fingers of a user are simultaneously located within a recessed area of a bottom wall and a groove on a side wall when the user is pouring liquid. In this regard, Schoonover merely states, "the second top wall 44 and each of the two bottom walls 54, 56 include indentations or notches 60 into which fingers may be inserted to facilitate grasping the container 10." Furthermore, in the single paragraph describing the use of the container, Schoonover only discloses use of the finger notches 60 for transportation of the container:

To use the container 10, the operator simply removes the cap 40 or 50 from whichever opening 38 or 48 is upright and dispenses fluid into the container 10. The container is then lifted by means of handle 36 and finger notches 60 and is transported to a desired location. Upon arrival, the cap 40, 50 of whichever opening 38, 48 is upright at this time, is removed and spout 46 is installed over the respective opening. The container 10 is then tilted to its other orientation so that the spout 46 becomes attached to the lowermost of the openings 38, 48. Fluid can then flow from the interior of the housing 12 through the spout 46, facilitated by the admittance of air through the vent in the other cap 40 or 50.

Schoonover, col. 3, lines 56-68 (emphasis added). No disclosure whatsoever is made of simultaneous use of a recessed area of a bottom wall and a groove on a side wall, let alone such a disclosure when the user is pouring liquid. Again, Schoonover should not be assumed to have the same functionality as Applicant's Claim 33 without additional evidence supporting such a conclusion.

Therefore, since Schoonover does not disclose a sloped groove in a sidewall operable to receive one or more fingers of a user, and since Schoonover does not contemplate a recess on a bottom wall and a groove on a side wall that can both be accessed by a single hand of a user while pouring liquid, Applicant respectfully asserts that the use of Schoonover to provide the basis for a 35 U.S.C. §103(a) rejection of Applicant's Claim 33 is inappropriate and Claim 33 should be allowed. Accordingly, since Claims 34 and 35 are dependent on Claim 33, these claims should also be allowed.

Conclusion

To facilitate a detailed response, should the Examiner maintain the rejections based on 35 U.S.C. §103(a), Applicant respectfully requests that the Examiner set forth the information as stated in MPEP 706.02(j), including the difference or differences in Applicant's claims over the applied references and the Examiner-proposed modification of the applied references necessary to arrive at Applicant's claimed subject matter.

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

MARSH FISCHMANN & BREYFOGLE LLP

By: /Karl A. Dierenbach/  
Karl A. Dierenbach  
Registration No. 55,875  
3151 South Vaughn Way, Suite 411  
Aurora, Colorado 80014  
(720) 747-8878

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